In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 1168

EDDIE GRIFFIN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a trial to the court in the United States District Court for the Southern District of Georgia, a jury trial having been waived, petitioner was convicted of having willfully possessed untaxed whiskey, in violation of 26 U.S.C. 5205(a) (2) and 5604(a) (1) (R. 1, 2). He was sentenced to imprisonment for a year and a day (R. 2, 11-13). The court of appeals affirmed *per curiam* (R. 26-27, 28; Pet. App. 7-8, 9). 329 F.2d 495.

There is no substance to petitioner's contentions (Pet. 4-5) that he was not confronted at the trial by his accusers nor properly identified as the one to whom delivery of the untaxed whiskey was made. A.T.U. Agent Boatheimer testified that in November 1961 he was working in an undercover capacity for a liquor law violator in the Savannah area, and that on the night of November 20, 1961, he was told that "the whiskey was to go to Eddie Griffin" (R. 4-8). The following transpired (Emphasis added.) (R. 4, 5, 8):

> Q. [by government counsel] Did you have occasion on that date to contact one *Eddie Griffin, the defendant in this case?*
>
> A. Yes, I did.
>
> Q. Tell us about that—What happened?
>
> A. On Monday, November 20th, 1961 I picked up fifty gallons of non-tax paid whiskey at the State Line Truck Stop in South Carolina on Highway 17 and delivered it to a store at the Corner of 31st and Burroughs Street here in Savannah. Actually, I parked in front of the store and *Eddie* [*G*]*riffin* was summoned from the store and came out and he was told the whiskey was here, in the car which I was driving. * * * *Eddie Griffin* called three colored men who were across the street and called them over to the car and he * * * said take this whiskey in this car and store it across the street in the alley in a house and * * * the three colored men then removed the fifty gallons of non-tax paid whiskey and hid it in two or three nearby houses. *Eddie Griffin* then returned, turned and talked to the

men standing by there and then returned to the store. * * *

* * * * *

Q. [by defense counsel] You came up, you saw *this man* in front of the store?

A. He was in the store and was called out so he came outside.

* * * *

Q. This whiskey was never actually delivered to *this man's* possession. He was told the whiskey was there and is that all?

A. That's right, sir.

The fact that Agent Boatheimer did not specifically point to the petitioner in the court room is without significance. There was no mistake in the mind of the court (R. 7, 9), the prosecutor or petitioner that Boatheimer was referring to the petitioner, the Eddie Griffin on trial.[1]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.

JUNE 1964

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[1] Identical contentions were rejected by the Fifth Circuit in *United States* v. *Delegal*, 329 F.2d 494, pending before this Court in No. 1167, O.T. 1963.

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